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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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### FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its June 12, 2012 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at [www.sdcounty.ca.gov/clerb](http://www.sdcounty.ca.gov/clerb).

### **CLOSED SESSION**

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

| DEFINITION OF FINDINGS |   |
|------------------------|---|
| Sustained              | The evidence supports the allegation and the act or conduct was not justified.                |
| Not Sustained          | There was <u>insufficient evidence</u> to either prove or disprove the allegation.            |
| Action Justified       | The evidence shows the alleged act or conduct did occur but was lawful, justified and proper. |
| Unfounded              | The evidence shows that the alleged act or conduct did not occur.                             |
| Summary Dismissal      | The Review Board lacks jurisdiction or the complaint clearly lacks merit.                     |

### CASES FOR SUMMARY HEARING (12)

### **ALLEGATIONS, FINDINGS & RATIONALE**

#### 11-025

1. Discrimination/Other – Deputy 1 profiled and/or displayed prejudice toward the complainant due to a “HELLS 21” motorcycle patch he wore.

Board Finding: Not Sustained

Rationale: While on traffic patrol, Deputy 1 observed the complainant exceeding the speed limit. Deputy 1 paced the complainant and confirmed excess speed. Deputy 1 stated that due to the distance, he was unaware of what the complainant was wearing upon his first visual. Field Interview Reports document prior contacts law enforcement had with the complainant on October 29, 2009 and January 24, 2011, concerning his status as a “Hells Angel supporter”. Law enforcement officers are trained to be cautious and vigilant while taking any law enforcement action. Deputy 1 denied profiling the complainant. There was no tangible evidence to either prove or disprove this allegation.

2. Misconduct/Discourtesy – Deputy 1 said to the complainant, “you threatening me motherfucker”.

Board Finding: Not Sustained

Rationale: The complainant and a witness stated Deputy 1 utilized profanity during this interaction, which is a violation of Sheriff's Department policy. Deputy 1 denied using profanity during his contact with the

complainant. There were no audio recordings of this interaction and no other evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 1 turned off a tape recorder during his interaction with the complainant so it would not record his use of profanity.

Board Finding: Not Sustained

Rationale: Deputy 1 stated he took out his digital recorder because of threats made by the complainant. The digital recorder was not utilized during this contact and there was no audio recording or other evidence available to either prove or disprove this allegation.

4. Misconduct/Intimidation – Deputy 1 told the complainant, “I know where you live,” “I know where you ride,” and “I just talked to someone that knows more about you than you know about yourself”.

Board Finding: Action Justified

Rationale: Deputy 1 said another deputy heard radio traffic and recognized the complainant’s name. Law enforcement personnel frequently exchange pertinent information during the course of duties for officer safety. The evidence shows the conduct occurred and was lawful, justified and proper.

5. False Arrest – Deputy 1 detained the complainant and his companion for 45 minutes, then issued a speeding violation for going with the flow of traffic in the Number 1 lane, as other vehicles sped past in the Number 2 and 3 lanes.

Board Finding: Action Justified

Rationale: According to the Computer Aided Dispatch records, this event began at 10:33 a.m., and ended at 11:11 a.m.; a length of 38 minutes. Deputy 1 initially observed two motorcycles traveling faster than all other vehicles and estimated their speed to be 80-85 mph. Deputy 1 sped up, got closer and paced them at about 82 mph. The complainant did not deny that he was speeding; only that he was “going with the flow of traffic.” There is no “flow of traffic” rule that allows exemption(s) to the basic speed law. The complainant was issued Citation #547789, for exceeding the posted speed limit; a violation of VC§ 22349, Maximum Speed Limit. The evidence shows the conduct was lawful, justified and proper.

6. Misconduct/Procedure – Deputy 1 performed a “wheelie” upon leaving the scene of this incident.

Board Finding: Not Sustained

Rationale: Deputies are required to operate all vehicles in a careful and prudent manner and obey all departmental orders and laws of the state in the performance of their duties. A witness to this incident stated she heard Deputy 1 leave quickly, but her view was obstructed and she did not visually observe the departure. Deputy 1 said in order to gain freeway speed and for merging purposes, he accelerated quickly as he rode down the right shoulder. Deputy 1 denied that his front wheel left the ground. Without any tangible evidence there are insufficient grounds to either prove or disprove this allegation.

7. Excessive Force – Five Sheriff Patrol vehicles and a motorcycle officer approached the complainant with hands on their weapons without provocation during a routine traffic stop.

Board Finding: Not Sustained

Rationale: Deputies responded to Deputy 1’s request for back-up. It is common practice for law enforcement officers to respond in numbers to any given situation. Deputy 1 made first contact and did not recall having his hand on his weapon. As authorized by law, deputies may use physical force in the performance of their duties when the need for such force is legally justified and necessary, as well as reasonably and legally applied. Statements made by the complainant and Deputy 1 are in dispute and there was insufficient evidence to either prove or disprove this allegation.

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**11-032**

1. Misconduct/Procedure- Deputy 4 classified the former Mexican Mafia inmate into complete isolation.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 4 did not provide dayroom time to the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputy 2 did not process and/or respond to the complainant's grievance submitted in Dec 2010 and/or January 2011.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 4 would not allow the complainant's investigator to have Professional Contact Visits in December 2010 and/or March 2011.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 3 infringed upon the complainant's legal rights by not allowing his attorney to utilize a laptop computer during a professional visit.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Retaliation –Deputies 1 and 4 retaliated against the complainant in response to letters he wrote to Deputy District Attorney Amador.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Misconduct/Procedure – Deputy 4 refused to take and/or investigate the complainant's complaint regarding classification.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

(*CLERB Investigator's note:* Other issues brought forth by the complainant concerning food, medical visits, visitor searches, etc are outside CLERB's purview and were referred back to the Sheriff's Department for investigation.)

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**11-033**

1. Excessive Force – Deputy 1 threw a night stick (baton) through the complainant’s bicycle spokes.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Discourtesy – Deputy 1 laughingly said to the complainant, “you should have seen yourself flying over the handlebars of your bike dude, that shit was so fucking funny!”

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Discourtesy – Deputy 1 at the Ramona substation laughingly talked about the incident as the injured complainant sat on a bench.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – An unidentified female sergeant said she was unsure as to what to do when a deputy asked if the complainant should be taken to jail or a hospital.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 1 delayed making a decision on the complainant’s medical care for over 45 minutes as blood dripped from his ear after using force to effect an arrest.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Procedure – Deputy 1 released the complainant from custody at the hospital after being told he needed a higher level of medical care.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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**11-043**

1. Misconduct Procedure – Deputy 5 presented the complainant with a write up and told him, “You can rip it up for all I care, you’ve been served.” the complainant was then disciplined for ripping up the write up.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 5 placed the complainant in Administrative Segregation on or about April 2, 2011.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputy 1 told the complainant that he would get him released to mainline housing if he tore up his grievance/complaint.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure - Deputy 2 refused to talk with the complainant about his grievances and stated, “I’m not allowed to give you that type of information” when asked about the Attorney General’s Office.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 2 caused the complainant to be placed on lockdown in Administrative Segregation on or about April 12, 2011.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Procedure – Deputy 3 returned the complainant to Administrative Segregation on or about April 10, 2011.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

7. False Report - Deputy 3 falsified the segregated housing order citing the reason for placing the complainant in administrative segregation.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Misconduct/Discourtesy - Deputy 4 responded to an intercom call from the complainant, “What do you want slob?”

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

9. Misconduct/Procedure - Deputy 7 denied the complainant use of a telephone.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

10. Misconduct/Intimidation – Deputy 7 stated “If he does not stop acting up, they were going to fuck him up.”

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

11. Misconduct/Truthfulness - Deputy 6 told the complainant’s wife that he had advised her he would look into her husband’s situation.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

12. Misconduct/Procedure – Deputy 7 told the complainant’s wife that she could not file a complaint on behalf of her husband.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

13. Misconduct/Procedure – Deputy 7 refused to give the complainant his food gift packs and/or money deposits.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

14. Misconduct/Procedure – Deputy 7 refused to take phone calls from the complainant’s wife.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

15. Misconduct/Procedure – Deputy 7 refused to provide the complainant with appropriate medical treatment and medication.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **11-061**

1. False Arrest – Deputy 3 arrested the complainant for multiple charges.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 3 repeatedly called the complainant’s estranged wife and asked her, “What do you want us to do?”

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputy 3 arrested the complainant and held him at the Fallbrook station for approximately eight hours without providing an explanation.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 5 trumped up charges in order to run up the complainant’s bail.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 3 failed to conduct a proper investigation by not interviewing key witnesses and not photographing an alleged victim of domestic violence completely.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Truthfulness – Deputies 1-5 lied about these events.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

7. False Reporting – Deputies 1-5 made false reports concerning these events.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Criminal Conduct – Deputies 1 and 4 engaged in sexual contact while on duty at the Vista Detention Facility.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

9. Criminal Conduct – Deputy 5 engaged in sexual activities in a basement cell at the Vista Detention Facility.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

10. Criminal Conduct – There is corruption between the District Attorney’s Office and the Sheriff’s Department.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **11-066**

1. Illegal Search or Seizure – Probation Officer 1 entered the complainant’s home without properly displaying a search warrant.

Board Finding: Action Justified

Rationale: Probation Officer 1 and members of the San Diego Police Department’s Gang Suppression Team entered the residence of a juvenile probationer to conduct a 4th Waiver Search. One condition of the juvenile’s probation, to which he stipulated, required that he would submit his person, property, or vehicle, and any property under his immediate custody or control to a search at any time, with or without probable cause, with or without a search warrant. The evidence shows that the alleged act did occur, but was lawful, justified and proper.

2. Illegal Search or Seizure – Probation Officer 1 opened a safe or supervised the opening of a safe that was unrelated to the juvenile probationer.

Board Finding: Summary Dismissal

Rationale: Probation Officer 1 did not open a safe or supervise the opening of a safe. This function was performed by a member of the San Diego Police Department’s Gang Suppression Team, over which the Review Board lacks jurisdiction.

3. Illegal Search or Seizure – Probation Officer 1 confiscated or supervised the confiscation of materials that belonged to the complainant and were unrelated to the juvenile probationer.

Board Finding: Summary Dismissal

Rationale: Probation Officer 1 did not confiscate or supervise the confiscation of any materials while conducting a 4<sup>th</sup> waiver search on a juvenile probationer. This function was performed by a member of the San Diego Police Department's Gang Suppression Team, over which the Review Board lacks jurisdiction.

4. Misconduct/Procedure – Probation Officer 1 failed to provide the complainant with a property receipt for items confiscated during probation search.

Board Finding: Summary Dismissal

Rationale: Probation Officer 1 was not responsible for providing a property receipt for items confiscated during a probation search. This duty was the responsibility of members of the San Diego Police Department, who confiscated various items for evidentiary purposes and to show dominion and control over the safe and its contents. The Review Board lacks jurisdiction over this agency.

5. Misconduct/Procedure – Probation Officer 1 failed to identify himself or provide contact information to the complainant.

Board Finding: Not Sustained

Rationale: Probation Officer 1 reported that he verbally identified himself as a Probation Officer while knocking on the door of the complainant's residence, and again when the complainant opened her door. Before leaving the residence, Probation Officer 1 reported providing the complainant his name and cell phone number. There was insufficient evidence to either prove or disprove the allegation.

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**11-074**

1. Death Investigation/Overdose - Deputies 1 and 2 found inmate Daniel James Sisson unresponsive after he had failed to appear for a medication pass at the Vista Detention Facility.

Board Finding: Action Justified

Rationale: Upon discovery of a non-responsive inmate, Deputies 1 and 2 requested medical assistance and life-saving measures were initiated until Sisson was pronounced deceased. The Medical Examiner determined Sisson died of sudden death associated with acute and chronic bronchial asthma; history of chronic heroin/opioid abuse with withdrawal symptoms; methamphetamine use; manner of death was natural. Toxicology tests were positive for trimethobenzamide, naproxen, naproxen metabolite, methamphetamine, and amphetamine. There was no complaint or evidence of misconduct or a failure to act by any Sheriff's Department personnel.

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**11-085**

1. False Arrest: Deputy 1 arrested the complainant on March 14, 2011.

Board Finding: Summary Dismissal

Rationale: The complainant formally withdrew the complaint against Deputy 1 on May 7, 2012. CLERB no longer has authority to investigate this complaint based upon the following CLERB Rules & Regulations: 5.7 Withdrawal of Complaints. A complaint may be withdrawn from further consideration at any time by a written notice of withdrawal signed and dated by the complainant.

2. Excessive Force: Deputy 1 inappropriately applied handcuffs which caused them to tighten on the complainant's wrists.

Board Finding: Summary Dismissal

Rationale: See Rationale #1



3. Misconduct/Harassment: Deputy 2 harassed the complainant on March 15, 2011.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

4. Misconduct/Harassment: Deputy 2 harassed the complainant on March 16, 2011.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

5. Misconduct/Harassment: Deputy 2 harassed the complainant on March 17, 2011.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

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## **11-118**

1. Death Investigation/Accident – Deputy 1 found inmate Richard Ian Diaz on the floor of his George Bailey Detention Facility cell unresponsive and not breathing.

Board Finding: Action Justified

Rationale: Upon discovery of a non-responsive inmate, Deputy 1 requested medical assistance and life-saving measures were initiated until Diaz was pronounced deceased. The Medical Examiner determined Diaz died of metabolic complications of functional gastric outlet obstruction, contributing: seizure disorder due to alcohol and heroin dependency; manner of death was accident. Toxicology tests were positive for benzodiazepines, tramadol, tramadol metabolites, chlorthalidone, nortriptyline, acetaminophen, demoxepam, and nortriptyline. There was no complaint or evidence of misconduct or a failure to act by any Sheriff's Department personnel.

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## **12-012**

1. Criminal Conduct – Deputy 1 parked his patrol unit in a red zone while on personal business.

Board Finding: Sustained

Rationale: Deputy 1 confirmed that his patrol unit was parked in a red zone on the night in question. He explained that he was conducting extra patrol at the shopping center that evening, and had parked directly in front of Ralphs in order to create a higher sense of visibility for the two stores that were opened late that night; one of which had recently been robbed. That withstanding, it is a violation of California Vehicle Code Section 22500.1 to park a vehicle along the edge of any highway, at any curb, or in any location in a publicly or privately owned or operated off-street parking facility, designated (red curb) as a fire lane. Further, Encinitas Municipal Code 14.16.040 grants exemption to parking restrictions for authorized emergency vehicles only when responding to emergency calls. No exigent circumstances existed at this location on the night in question; The evidence supports the allegation and the act was not justified.

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## **12-036**

1. Excessive Force – Probation Officer 1 beat the complainant's face repeatedly resulting in a swollen face and black eye.

Board Finding: Summary Dismissal

Rationale: The involved member was identified as a San Diego Police Department (SDPD) officer over whom CLERB does not have jurisdiction per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority.

2. Discrimination/Other – Probation Officer 1 asked if the complainant was a “Fuckin Fag” because he was wearing mascara.

Board Finding: Summary Dismissal

Rationale: The involved member was identified as a San Diego Police Department (SDPD) officer over whom CLERB does not have jurisdiction per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority.

3. Criminal Conduct/Hate Crime – Probation Officer 1 used unnecessary force and said a discriminatory slur when he arrested the complainant.

Board Finding: Summary Dismissal

Rationale: The involved member was identified as a San Diego Police Department (SDPD) officer over whom CLERB does not have jurisdiction per CLERB Rules & Regulations 4.1 Citizen Complaints: Authority.

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## **12-039**

1. Misconduct/Intimidation – Deputy 1 threatened to plant something illegal on the complainant.

Board Finding: Summary Dismissal

Rationale: The complainant failed to establish a prima facie showing of misconduct. Such complaints may be referred to the Review Board for Summary Dismissal, pursuant to CLERB Rules & Regulations: Section 9: Investigation of Complaints; Subsection 9.2: Screening of Complaints.

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